

# OFFICE OF THE ATTORNEY GENERAL

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Honorable Charles Adams  
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Ad Valorem Taxes - Exemptions -  
Education - Refunds

The use of the property determines whether or not the property is exempt from ad valorem tax.

Owners of constitutionally exempt property may petition for a refund of taxes paid in the prior two years.

Tax assessors must determine if use of commercially leased property by the Department of Human Resources is exclusive use for charitable purposes to support an exemption from ad valorem taxes.

A telephone system leased to a local school system is not an exclusive educational use and does not qualify for an exemption from ad valorem tax based on educational use.

Dear Mr. Adams:

This opinion is issued in response to your request for an opinion from the Attorney General.

### QUESTION I

When a property owner leases property to a tenant, and the tenant uses the property for educational use, is the taxpayer's use that of a commercial lease, or may he claim the tenant's use and receive an ad valorem tax exemption based on educational use?

### FACTS AND ANALYSIS

Section 40-9-1(1), Code of Ala. 1975, grants an exemption from ad valorem taxation to "all property, real and personal, used exclusively for religious worship, or schools or for purposes purely charitable." Courts have held that the use of the property and not its ownership establishes the foundation for exemption from ad valorem taxation.

The Alabama Supreme Court in State v. Church of the Advent, 208 Ala. 632, 95 So.3 (1923) held the following:

"It was therefore held in this state that exclusive use, irrespective of ownership, was, under this provision of the Constitution [Art. IV, Section 91] the test of the right of exemption. Under such construction therefore, the question of ownership becomes immaterial, but the matter of exemption is rested upon the use to which the property is put. The rent of the property here in question is but an incident to ownership, and it must necessarily follow as a logical conclusion that if the ownership is immaterial, the disposition of the rent, which is an incident to the ownership, is likewise of no consequence in construing this provision of the Constitution.

"To rent out a building is not to use it, within the meaning of the statute, but, in order to use it, it must be occupied or made use of."

In Anniston City Land Company v. State, 160 Ala. 253, 48 So. 659 (1909), the owner leased his property "for a substantial money consideration" to the lessee, who in turn used the property exclusively for educational purposes. The Court held that "it is the exclusive use for the purpose named which determines whether the property is subject to the burden of

taxation or not." The property in this case was held to be exempt.

#### CONCLUSION

The use of the property determines whether or not the property is exempt from ad valorem tax. If the property is used exclusively for educational purposes it is exempt from ad valorem tax. Whether said property is used exclusively for tax exempt purposes is a question of fact to be determined by the tax assessor.

#### QUESTION II

If Question I is answered in the affirmative, does a property owner qualify for a refund of taxes paid the prior two years?

#### FACTS AND ANALYSIS

Subsection (k) of Amendment 373 to the 1901 Constitution of Alabama provides:

"The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties and municipalities and property devoted exclusively to religious, educational or charitable purposes, . . ."

Constitutional exemptions, as distinguished from statutory exemptions, need not be claimed in order to secure the exemptions. Therefore, the property owner of constitutionally exempt property could petition for a refund of taxes paid in the prior two years even though that owner failed to claim the exemption previously. See, opinion of the Attorney General addressed to Sam Drinkard, Tax Assessor of Marengo County, dated March 30, 1950, Quarterly Report of Attorney General, Vol. 58, page 124.

#### CONCLUSION

In the case of a constitutional exemption the property owner does qualify for a refund of taxes paid in the prior two years.

#### QUESTION III

If either Question I or II is answered in the negative, can the tax collector proceed

to recapture any refunds previously given in the situation stated above?

As Questions I and II are answered in the affirmative, there is no need to answer Question III.

#### QUESTION IV

A taxpayer leases property to the Human Resources Department of the State of Alabama, and then requests an ad valorem tax exemption based on use by a charitable organization. Does this taxpayer qualify for an exemption for use by a charitable organization?

#### FACTS AND ANALYSIS

The opinion to the Honorable Debra O. Biggers, dated January 12, 1989, AG No. 89-00121, considered the status of state and county departments of human resources as follows:

"Internal Revenue Service Regulation Section 1.501(c)(2) states that included under the Section 501(c) definition of charity is any organization which provides relief of the poor and distressed or of the underprivileged. Section 38-2-6, Code of Ala. 1975, provides that it is the duty and responsibility of the State Department of Human Resources to 'administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance and to administer such welfare functions as may hereafter be invested in it by law. . . .'

"Under Alabama Law, the Alabama Department of Human Resources and the various county Departments of Human Resources constitute one governmental unit, and one state agency. Williams v. James, 420 So.2d 773 (Ala. 1982). The Alabama State Department of Human Resources and the various county Departments of Human Resources, therefore, meet the definition of charity as referred to in §20."

Clearly, then, the use of the property by the Department of Human Resources may be charitable use. However, a question of fact exists as to whether every function performed by that

prior opinion of this office that a commercial lease of real property to the Department of Human Resources is not an exclusive use for charitable purposes and, thus, will not support an exemption from ad valorem taxes. See opinion to the Honorable Charles E. Howard, Revenue Commissioner of Morgan County, dated September 4, 1990, AG No. 90-00353.

#### CONCLUSION

Unless the tax assessor can, from the facts in this particular case, make a factual determination that the use by the Department of Human Resources constitutes an exclusive charitable use, then use by the Department will not support an exemption from ad valorem taxes.

#### QUESTION V

A taxpayer leases a telephone system to a local school system and claims an exemption from business personal property tax based on educational use. Does the taxpayer qualify for the exemption based on educational use?

#### FACTS AND ANALYSIS

In Anniston City Land Co. v. State, 160 Ala. 253, 48 So. 659 (1909), the Supreme Court observed:

"The universal rule of construction is that exemptions from taxation, whether statutory or constitutional, are to be strictly construed, against the exemption and in favor of the right to tax, and that no person or property is to be exempted unless the intention to exempt such person or property clearly appears in some statute or constitutional provision."

In view of this rule of construction, any question regarding the use, the purpose, or the exclusiveness of either, must be resolved in favor of the tax and against the exemption. Therefore, a telephone system leased by the owner in the usual course of its business as an owner and lessor of commercial business property would be presumed to be subject to ad valorem tax. That presumption could only be overcome by clear and unambiguous evidence that the telephone system is used by the lessee exclusively for educational purposes. Any noneducational use would defeat the exemption.

CONCLUSION


In view of the limited facts given, it is the opinion of this office that a telephone system leased by a local school system is used for purposes other than exclusively educational and, therefore, will not support an exemption from ad valorem taxes.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General

By-

  
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